IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.332 OF 2007

Ganpat @ Ganu Krishna Shrungare & Anr. ...Appellants

vs.

Vithal Vishnu Shrungare & Ors. ...Respondents

Mr.A.S.Khandeparkar for the Appellants
Mr.Sunil Kadam for the Respondents

CORAM: A.S.OKA,J.
DATE : DECEMBER 11,2007.

P.C.:

1. Heard Shri Khandeparkar for the Appellants. The Appellants are the original defendant Nos.1 and 3 in a suit for partition and separate possession which is filed by the first Respondent. The main defence of the Appellants in the suit for partition was that there is already a prior partition and the parties have been in possession of their respective separate shares. The trial court did not accept the said case and had passed a decree for partition.

2. Shri Khandeparkar appearing for the Appellants has invited my attention to the finding recorded by the trial court in paragraph 10 of the Judgment which has been confirmed by the Appellate Court. He submitted that the finding clearly shows that the parties to the suit were cultivating different portions of the suit property. He submitted that the parties have been living separately and therefore, there is nothing

further to be proved for showing the existence of a prior partition.

3. I have carefully considered the submission. The Appellate Court has referred to the specific case made out by the first Respondent in his deposition that there was no prior partition. The Appellate Court as well as the trial court held that merely because the parties were living separately and were cultivating different portions of the property that by itself is no evidence of the severance of status. There are concurrent findings of fact that the Appellants have failed to prove earlier partition. Concurrent findings are based on appreciation of oral and documentary evidence on record. No substantial question of law arises. Second Appeal is accordingly dismissed.

4. However, it will be open for the parties to point out to the concerned Authority effecting the partition that the equities can be adjusted by allotting the properties in partition to the parties which are already under cultivation of the respective parties.

JUDGE